

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDMIN ALICEA,

13 Civ. 7073 (JGK)

Plaintiff,

-against-

THE CITY OF NEW YORK, et. al.,

DECLARATION OF ELISSA FUDIM
IN SUPPORT OF DEFENDANTS'
PARTIAL MOTION FOR SUMMARY
JUDGMENT

Defendants

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I, ELISSA FUDIM, declare as follows:

1. I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, representing defendants The City of New York, Officers Richard Balboolal, Alejandro Rivas, Paul Arico, Terence McGrath, Brendan Regan and Sergeant Cruz.

2. I submit this declaration in support of defendants' motion for partial summary judgment, which seeks the dismissal of: (i) all claims against Officers McGrath, Regan, Cruz (ii) all claims against Officer Arico other than the excessive force / failure to intervene cause of action, (iii) all claims against Officer Balboolal other than the false arrest cause of action, (iv) all claims against Officer Rivas other than the excessive force and malicious prosecution causes of action, and (v) the municipal liability claim against the City.

3. The purpose of this declaration is to attach documents exhibits, which documents are referenced in the accompanying 56.1 Statement and the accompanying Memorandum of Law.

4. Attached hereto as Exhibit 1 is a true and accurate copy of plaintiff's second amended complaint filed October 20, 2014.

5. Attached hereto as Exhibit 2 is a true and accurate copy of the deposition transcript of plaintiff Edmin Alicea, dated August 12, 2014.

6. Attached hereto as Exhibit 3 is a true and accurate copy of an excerpt of the deposition transcript of Officer Richard Balboolal, dated August 21, 2014.¹

7. Attached hereto as Exhibit 4 is a true and accurate copy of an excerpt of the deposition transcript of Officer Alejandro Rivas, dated August 19, 2014.

8. Attached hereto as Exhibit 5 is a true and accurate copy of an excerpt of the deposition transcript of Sergeant Fredy Cruz, dated August 20, 2014.

9. Attached hereto as Exhibit 6 is a true and accurate copy of an excerpt of the deposition transcript of Officer Terrence McGrath, dated January 7, 2015.

10. Attached hereto as Exhibit 7 is a true and accurate copy of an excerpt of the deposition transcript of Officer Brendan Regan, dated January 28, 2015.

11. Attached hereto as Exhibit 8 is a true and accurate copy of an excerpt of the deposition transcript of Officer Paul Arico, dated January 7, 2015.

12. Attached hereto as Exhibit 9 is a true and accurate copy of plaintiff's arrest report.²

¹ Portions of the officer depositions not having to do with the events of plaintiff's arrest have been removed.

² Plaintiff's date of birth has been redacted for filing.

13. Attached hereto as Exhibit 10 is a true and accurate copy of an excerpt from Officer Balboolal's memo book.

14. Attached hereto as Exhibit 11 is a true and accurate copy of an excerpt from Officer Rivas's memo book.

15. Attached hereto as Exhibit 12 is a true and accurate copy of an excerpt from Officer McGrath's memo book.

16. Attached hereto as Exhibit 13 is a true and accurate copy of an excerpt from Officer Regan's memo book.

17. Attached hereto as Exhibit 14 is a true and accurate copy of an excerpt from Officer Arico's memo book.

18. Attached hereto as Exhibit 15 is a true and accurate copy of the criminal court complaint charging plaintiff with one count of attempted tampering with physical evidence in violation of Penal Law §§110/215.40(2).

19. I am not aware of any Monell discovery which has taken place in this case. Specifically, I am not aware of any documents provided by plaintiff to defendants which plaintiff has indicated support its municipal liability claim. Neither am I aware of the disclosure of any witnesses plaintiff intends to use in support of its municipal liability claim.

20. Attached hereto as Exhibit 16 is a true and accurate copy of a civil complaint filed in Graham v. City of New York, 14-CV-10092 (SDNY) (filed December 23, 2014) by the law firm of Reibman and Weiner.

21. Attached hereto as Exhibit 17 is a true and accurate copy of a civil complaint filed in Ware v. City of New York, 14-CV-3837 (SDNY) (filed May 29, 2014) by the law firm of Reibman and Weiner.

22. Attached hereto as Exhibit 18 is a true and accurate copy of a civil complaint filed in Antanesian v. City of New York, 14-CV-1311 (SDNY) (filed February 27, 2014) by the law firm of Reibman and Weiner.

23. Attached hereto as Exhibit 19 is a true and accurate copy of a civil complaint filed in Abdul-Majid v. City of New York, 13-CV-7441 (SDNY) (filed October 22, 2013) by the law firm of Reibman and Weiner.

24. Attached hereto as Exhibit 20 is a true and accurate copy of a civil complaint filed in Thornton v. City of New York, 12-CV-1775 (EDNY) (filed April 11, 2012) by the law firm of Reibman and Weiner.

25. Attached hereto as Exhibit 21 is a true and accurate copy of the stipulation of settlement in Thompson v. City of New York, 10-CV-3603 (ARR) (SMG) (E.D.N.Y.).

26. Attached hereto as Exhibit 22 is a true and accurate copy of the stipulation of settlement in Lotorto v. City of New York, 10-CV-1223 (ILG) (JMA) (E.D.N.Y.).

27. Attached hereto as Exhibit 23 is a true and accurate copy of the Judgment pursuant to Rule 68 in Long v. City of New York, No. 09 Civ. 6099 (AKH) (S.D.N.Y.).

28. Attached hereto as Exhibit 24 is a true and accurate copy of the order dismissing Moise v. City of New York, 09-cv-9855 (DC) (JLC) (S.D.N.Y.) based on settlement.

29. Attached hereto as Exhibit 25 is a true and accurate copy of the stipulation of settlement in Taylor-Mickens v. City of New York, 09-cv-7923 (RWS) (S.D.N.Y.).

30. Attached hereto as Exhibit 26 is a true and accurate copy of the stipulation of settlement in McMillan v. City of New York, 04-cv-3990 (FB) (RML) (E.D.N.Y.).

31. Attached hereto as Exhibit 27 is a true and accurate copy of the stipulation of settlement in Avent v. City of New York, 04-CV-2451 (CBA)(CL) (E.D.N.Y.).

32. Attached hereto as Exhibit 28 is a true and accurate copy of the stipulation of settlement in Smith v. City of New York, 04-CV-1045 (RLM) (E.D.N.Y.).

33. Attached hereto as Exhibit 29 is a true and accurate copy of the order dismissing Powers v. City of New York, 04-CV-2246 (NGG) (E.D.N.Y.) based on settlement.

34. Attached hereto as Exhibit 30 is a true and accurate copy of the docket in Dotson v. City of New York, 03-CV-2136 (RMB) (S.D.N.Y.) showing the case concluded in settlement (Docket Entry #8).

35. Attached hereto as Exhibit 31 is a true and accurate copy of the stipulation of settlement in Richardson v. City of New York, 02-CV-3651 (JG) (CLP) (E.D.N.Y.).

36. Attached hereto as Exhibit 32 is a true and accurate copy of the docket showing that Barry v. City of New York, 01-CV-10627 (CBM) (S.D.N.Y.) resulted in settlement (Docket Entry #36).

37. Attached hereto as Exhibit 33 is a true and accurate copy of the docket showing that Walton v. City of New York, 99-CV-4430 (AKH) (S.D.N.Y.) resulted in settlement following a judgment against the City on plaintiff's employment discrimination claim (Docket Entry #41).

Dated: October 2, 2015
New York, NY

/s/ Elissa P. Fudim
Elissa P. Fudim, Esq.